

probable cause

4-5 minutes

Probable cause refers to a [reasonable](#) basis for believing that a [crime](#) may have been committed (for an [arrest](#)) or that [evidence](#) of a crime is present in the place to be searched (for a search).

Probable cause is a [Fourth Amendment](#) requirement that usually must be met before the police make an arrest, conduct a search, or receive a [warrant](#). The Fourth Amendment also requires that any arrest be based on probable cause, even when the arrest is made pursuant to an arrest warrant.

Under [exigent circumstances](#), probable cause can justify a warrantless [search or seizure](#). People arrested without a warrant are required to be brought before a competent authority shortly after the arrest for a [prompt judicial determination](#) of probable cause.

A lack of probable cause will render a warrantless arrest invalid. Any evidence resulting from that arrest, including physical evidence, confessions, etc., will be [suppressed](#), according to the Supreme Court's ruling in [Mapp v. Ohio](#). A narrow exception applies when an arresting officer, because of an error made by court employees, mistakenly and in good faith believes that a warrant has been issued. In this case, notwithstanding the lack of probable cause, the [exclusionary rule](#) does not apply and the evidence obtained may be admissible, as the Supreme Court decided in [Arizona v. Evans](#).

In [People v. Boyer](#), the Appellate Court of Illinois, Third District, ruled that unlike court clerks, prosecutors are part of a law enforcement team and are not "court employees" for purposes of the [good-faith exception to the exclusionary rule](#).

In [District of Columbia v. Wesby](#), the United States Supreme Court observed that probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of any criminal behaviors. In addition, probable cause is not a high bar; it is a fluid and flexible concept that depends on the totality of the circumstances. What constitutes the "totality of the circumstances" often depends on how the court interprets the reasonableness standard.

Similarly, in [Illinois v. Gates](#), the Supreme Court favored the totality-of-the-circumstances approach to determining probable cause. The Court believed that the determination should be practical and common-sense, and this standard could better protect public and private interests. Furthermore, when reviewing the decision to issue a warrant, a court that faces a suppression [motion](#) owes great deference to the [magistrate](#) who issued the warrant.

For a warrantless search, probable cause can be established by in-court [testimony](#) after the search. In the case of a warrant search, however, an [affidavit](#) or recorded testimony must support the warrant by indicating on what basis probable cause exists, as the Supreme Court noted in [Whiteley v. Warden](#).

There is a [presumption](#) that police officers are reliable sources of information, and affidavits in support of a warrant will often include their observations, such as seen in the facts of [Franks v. Delaware](#). In [United States v. Mick](#), the United States Court of Appeals for the Sixth Circuit noted that the officers' experience and training are relevant factors in assessing the existence of probable cause. The facts in [United States v. Schaefer](#) suggest that information from victims or [witnesses](#), if included in an affidavit, may be important factors as well.

The good faith exception that applies to arrests also applies to search warrants: when a defect renders a warrant constitutionally invalid, the evidence does not have to be suppressed if the officers acted in good faith, as the United States Court of Appeals for the Eighth Circuit ruled in [United States v. White](#). In addition, the United States Court of Appeals for the Second Circuit ruled in [United States v. Clark](#) that courts should evaluate an officer's good faith by looking at the nature of the error and the way in which the warrant was executed.

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